

238691



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

EMMA B. MASSET,

Defendant.

ECF Case

No. 08 Civ. 6336 (SCR)

**CONSENT DECREE**

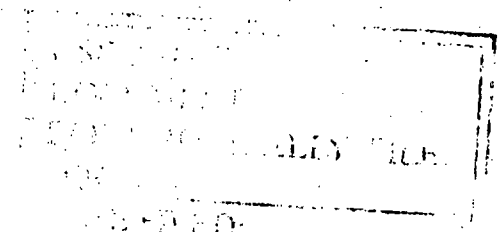


TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	-1-
II.	<u>JURISDICTION</u>	-2-
III.	<u>PARTIES BOUND</u>	-2-
IV.	<u>DEFINITIONS</u>	-2-
V.	<u>STATEMENT OF PURPOSE</u>	-3-
VI.	<u>PAYMENT OF RESPONSE COSTS</u>	-4-
VII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u>	-6-
VIII.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	-7-
IX.	<u>RESERVATIONS OF RIGHTS BY UNITED STATES</u>	-8-
X.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANT</u>	-8-
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	-9-
XII.	<u>RETENTION OF RECORDS AND CERTIFICATION</u>	-10-
XIII.	<u>NOTICES AND SUBMISSIONS</u>	-11-
XIV.	<u>RETENTION OF JURISDICTION</u>	-12-
XV.	<u>INTEGRATION[/APPENDICES</u>	-12-
XVI.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	-13-
XVII.	<u>SIGNATORIES/SERVICE</u>	-13-
XVIII.	<u>FINAL JUDGMENT</u>	-14-

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607, 9613(g)(2), as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Westwood Chemical Corporation Superfund site ("Site") located in the City of Middletown, Town of Wallkill, Orange County, New York ("the Site").

B. The defendant ("Settling Defendant") that has entered into this Consent Decree ("Consent Decree") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

D. In performing response action at the Site, EPA has incurred response costs and may incur additional response costs in the future.

E. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

F. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site. The United States has determined that the Settling Defendant is able to pay the amount specified in Section VI.

G. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that she may have to jurisdiction of the Court or to venue in this District. Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and her heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:
  - a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
  - b. "Consent Decree" shall mean this Consent Decree and all exhibits and appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
  - c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
  - d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
  - e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Financial Information" shall mean those financial documents identified in Appendix A.
- h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- j. "Parties" shall mean the United States and Settling Defendant.
- k. "Plaintiff" shall mean the United States.
- l. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- n. "Settling Defendant" shall mean Emma B. Masset.
- o. "Site" shall mean the Westwood Chemical Corporation Superfund site, encompassing the former Westwood Chemical Corporation facility situated on an approximately 9-acre parcel of land located at 46 Tower Road, City of Middletown, Town of Wallkill, Orange County, New York.
- p. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

- 4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to resolve her alleged civil liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Payment of Past Response Costs to EPA. Settling Defendant agrees to the entry of a judgment (in the form attached as Exhibit A) against her and in favor of the United States, in full compromise and satisfaction of the allegations against her set forth in the Complaint, for the sum of one hundred and eighty-four thousand and five hundred dollars (\$184,500) (the "Settlement Amount"). This Settlement Amount shall constitute a debt due and owing to the United States upon entry of this Consent Decree by the Court, and is to be discharged by payment to the United States under the following terms and conditions:

- a. Settling Defendant shall pay to the United States the Settlement Amount, in three equal installments, plus an additional sum for Interest;
- b. The first installment payment in the principal amount of \$61,500, plus interest, shall be paid within 30 days of entry of this Consent Decree;
- c. Except as otherwise provided in Paragraph 11, the second installment in the principal amount of \$61,500, plus interest, shall be paid on or before the first anniversary of entry of this Consent Decree;
- d. Except as otherwise provided in Paragraph 11, the third installment in the principal amount of \$61,500, plus interest, shall be paid on or before the second anniversary of entry of this Consent Decree;
- e. Settling Defendant agrees that the United States shall have a security interest in the real property owned by Settling Defendant listed in Appendix B (the "Pledged Property") as set forth more fully in Paragraph 10, below, and that the United States shall place a lien on such property (the "Judgment Lien") until such time as Settling Defendant has paid the total Settlement Amount.

Each such payment shall include, in addition to the principal amount, an additional sum for accrued Interest on the outstanding balance, calculated from the date of entry of this Consent Decree, until the date of payment. Settling Defendant may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

6. Settlement With New York State. The United States has been advised that New York State has filed an action against Settling Defendant in New York State Supreme Court, Albany County, seeking, among other relief, penalties against her for violation of certain State laws and regulations relating to the Site, and that Settling Defendant anticipates settling that claim by agreeing to make payments to New York State in the total amount of \$20,500.
7. Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of New York following lodging of the Consent Decree.

8. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the EPA Region and Site/Spill ID Number: 02WN, DOJ Case Number: 90-11-2-08602/2, and the Civil Action Number: 08 Civ. 6336 (S.D.N.Y.).

9. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.
10. Security for Payment. Settling Defendant acknowledges and agrees that her obligation to make payment pursuant to Paragraph 5 shall be secured by Judgment Lien in favor of the United States on the Pledged Property. Settling Defendant agrees that she will execute and deliver, at the request of the United States, such instruments as the United States may request regarding such security interest, including, without limitation, security agreements and financing statements, and that on the request of the United States, she will deliver to the United States such documentation as may be required in order to perfect any such lien. Settling Defendant agrees to notify the United States, in writing, not less than thirty (30) days prior to the scheduled sale, transfer or financing of any Pledged Property required to be secured pursuant to this Consent Decree. Such notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sale price must be at least equal to the fair market value of the Property. Settling Defendant further agrees that she will obtain an appraisal for any of the Pledged Properties that is to be sold to any person with whom she is affiliated by direct or indirect family relationship or by any current or former contractual or business relationship.
11. Acceleration of Settling Defendant's Payment Obligations Upon Sale or Transfer of Security. Upon the sale, transfer or financing of any Pledged Property, in the sole discretion of the United States, amounts due under Paragraph 5 shall become due and payable to the United States, to the extent of the net proceeds from such sale, transfer or financing. Payments required by this Paragraph 11 shall be applied to the payment next coming due under Paragraph 5.c or 5.d. The United States shall provide written notice of its election under this paragraph to the Settling Defendant within thirty (30) days of its receipt of any notice from the Settling Defendant under Paragraph 10.

#### **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

12. Acceleration Upon Failure to Make Required Payment. If Settling Defendant fails to

make any payment required by Paragraph 5 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

13. Stipulated Penalty.

- a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 12, \$250 per violation per day that such payment is late.
- b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties." Settling Defendant shall make payments of stipulated penalties via EFT directed to the Federal Reserve Bank of New York, providing the following information to its bank:
  - i. EFT to be directed to: Federal Reserve Bank of New York
  - ii. ABA Number: 021030004
  - iii. Federal Reserve Bank of New York account number: 68010727
  - iv. SWIFT address: FRNYUS33
  - v. Address: Federal Reserve Bank of New York, 33  
Liberty Street, New York NY 10045
  - vi. Field Tag 4200 of the Fedwire message to read: D 68010727  
Environmental  
Protection Agency
  - vii. Amount of payment: Specify the Amount of the Payment
  - viii. Settling Party's Name and:  
Identification of  
stipulated penalties: Emma B. Masset, stipulated penalties
  - ix. Civil action Number: 08 Civ. 6336 (SDNY)
  - x. EPA Site/spill identifier: 02WN
- c. At the time of each payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices).
- d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.
15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.
16. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

17. Except as specifically provided in Section IX (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Section VI, Paragraph 5 (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 29. If the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 29, is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 24 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

**IX. RESERVATIONS OF RIGHTS BY UNITED STATES**

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 17. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:
- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
  - b. criminal liability;
  - c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
  - d. liability based on the ownership or operation of the Site by Settling Defendant after signature of this Consent Decree by Settling Defendant;
  - e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
  - f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.
19. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial, insurance or indemnity certification made by Settling Defendant in Paragraph 29, is false or, in any material respect, inaccurate.

**X. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

20. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
  - b. any claim arising out of the response actions at the Site, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

- c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

Except as provided in Paragraph 22 (Claims Against Other Potentially Responsible Parties) and Paragraph 26 (Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 18 (d)-(f), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).
22. Claims Against Other Potentially Responsible Parties. Settling Defendant agrees not to assert any claims or causes of action that she may have for all matters relating to the Site, including for contribution, against any other person who is a potentially responsible party under CERCLA at the Site. This waiver of claims shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant. Settling Defendant expressly reserves all other claims not addressed in this Consent Decree.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23. Except as provided in Paragraph 22, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 22, the Parties expressly reserve any and all rights, defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.
24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within

the scope of such reservations.

25. Settling Defendant also agrees that, with respect to any suit or claim brought against her for matters related to this Consent Decree, she will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon her. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.
26. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

## **XII. RETENTION OF RECORDS AND CERTIFICATION**

27. Until six (6) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in her possession or control, or which come into her possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.
28. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, she shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all records that she claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

29. Settling Defendant hereby certifies that, to the best of her knowledge and belief, after thorough inquiry, she has:
- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to her potential liability regarding the Site since notification of potential liability by the United States or New York State or the filing of suit against her regarding the Site, and that she has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and
  - b. accurately and materially set forth her financial circumstances at the time of submission of the financial information submitted to EPA or DOJ, including, without limitation, the information identified on Appendix A, and those circumstances have not materially improved between the time the financial information was submitted to EPA or DOJ and the time Settling Defendant executes this Consent Decree;
  - c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information, and further certifies that there is no insurance policy which would provide reimbursement or other payment to her or on her behalf for claims against her with respect to the Site, and that she does not have any agreement with any person providing indemnity to her for such claims.

### **XIII. NOTICES AND SUBMISSIONS**

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

United States Attorney for the Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, NY 10007  
Attention: Sarah E. Light, Chief, Environmental Protection Unit

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DOJ Case Number: 90-11-2-08602/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

and

As to EPA:

Dilshad Perera  
On-Scene Coordinator, Emergency and Remedial Response Division  
U.S. EPA, Region 2  
2890 Woodbridge Avenue  
Edison, NJ 08837

and

Michael A. Mintzer  
Office of Regional Counsel  
U.S. EPA, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866

As to Settling Defendant:

Emma B. Masset  
242 Clove Road  
Montague, NJ 07827

**XIV. RETENTION OF JURISDICTION**

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. INTEGRATION/APPENDICES**

32. This Consent Decree, including Exhibit A (Judgment), Appendix A (Financial Information) and Appendix B (Pledged Property), constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly

contained in this Consent Decree.

**XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.
34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XVII. SIGNATORIES/SERVICE**

35. Each undersigned representative of Settling Defendant to this Consent Decree certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.
36. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.
37. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on her behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XVIII. FINAL JUDGMENT**

38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED:



UNITED STATES DISTRICT JUDGE

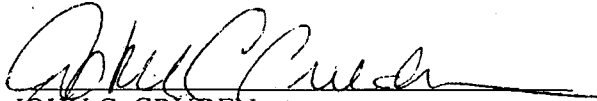
Dated:

  
White Plains, NY

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States of America v. Emma B. Masset* (08 Civ. 6336), relating to the Westwood Chemical Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_



JOHN C. CRUDEN

Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

LEV L. DASSIN

Acting United States Attorney for the  
Southern District of New York

Date: May 4, 2009

By: 

SARAH E. LIGHT

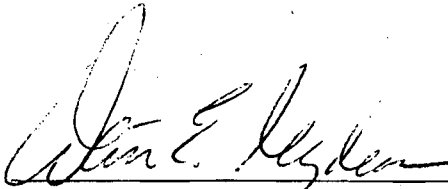
BETH E. GOLDMAN

Assistant U.S. Attorneys  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel. 212-637-2774; 2732  
Fax. 212-637-2686

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States of America v. Emma B. Masset* (08 Civ. 6336), relating to the Westwood Chemical Corporation Superfund Site.

Date:

April 16, 2009

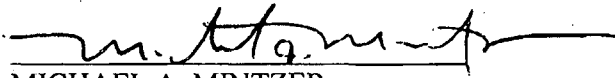


WALTER E. MUGDAN

Director, Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007

Date:

April 16, 2009



MICHAEL A. MINTZER

Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States of America v. Emma B. Masset* (08 Civ. 6336), relating to the Westwood Chemical Corporation Superfund Site.

FOR DEFENDANT EMMA B. MASSET

Date: 4-5-09

Emma B. Masset

Typed Name: Emma B. Masset  
Address: 242 Clove Road  
Montague, NJ 07827

APPENDIX A

to

Consent Decree in the matter of *United States of America v. Emma B. Masset* (08 Civ. 6336),  
relating to the Westwood Chemical Corporation Superfund Site

Financial Information  
Submitted to EPA or DOJ

1. Letter dated October 12, 2005 from Dominic R. Cordisco, Esq., Drake, Sommers, Loeb, Tarshis, Catania, & Liberth, PLLC, counsel to Defendant Emma Masset to New York State Assistant Attorney General Maureen Leary (with copies to, among others, Emma Masset), and enclosures.
2. Undated Letter, sent by FAX November 17, 2006, from Margaret Cangilos-Ruiz, Esq., Whiteman Osterman & Hanna LLP (counsel to Defendant Emma Masset), to Maureen Leary (with copies to, among others, Sarah Light, Esq., Assistant United States Attorney, Southern District of New York and to Michael Mintzer, Esq., Assistant Regional Counsel, United States Environmental Protection Agency) providing financial information concerning Ms. Masset.
3. Enclosures sent with letter dated November 22, 2006 from John J. Henry, Esq., Whiteman Osterman & Hanna LLP (counsel to Defendant Emma Masset) to Sarah Light. Enclosures included Individual Ability to Pay Claim - Financial Data Request Form ("FDRF") dated November 21, 2006 and signed by Defendant Emma Masset together with the documents attached in support or supplementation of the FDRF.
4. Letter dated December 21, 2006 from John J. Henry, Esq. to Sarah Light, Esq., with copy to Defendant Emma Masset and to Maureen Leary, and enclosures. Enclosures included 2003 federal income tax returns for Defendant Emma Masset; Schedules K-1 for the years 2004, 2005 and 2006 from Westwood Chemical Corporation for Defendant Emma Masset; IRS Form 4506 (Request for Copy or Transcript of Tax Return) for 2002, 2003, 2004 and 2005;; State of New Jersey Liquor License application documentation relating to Defendant Emma Masset; Real Property deeds and contract for properties owned by Defendant Emma Masset or by corporations or other entities which were owned in whole or in part by Ms. Masset; 2004 federal income tax returns for E.A. Masset Enterprises, Inc.; and Bank account records relating to real property at 244 Clove Road.
5. Enclosures sent with letter dated April 10, 2007 from John J. Henry, Esq. to Sarah Light, Esq., including 2004 and 2005 federal income tax returns for Defendant Emma Masset.
6. Enclosures sent with letter dated May 31, 2007 from John J. Henry, Esq. to Michael Mintzer, Esq., including 2006 federal income tax returns for Defendant Emma Masset.
7. Enclosures sent with letter dated August 15, 2007 from John J. Henry, Esq. to Michael Mintzer, Esq., including 2005 and 2006 federal income tax returns for E.A. Masset Enterprises, Inc., Masset Group, Inc., MSZ Corporation, Kennedy Masset Partnership, Buttercup, LLC.

APPENDIX B

to

Consent Decree in the matter of *United States of America v. Emma B. Masset* (08 Civ. 6336),  
relating to the Westwood Chemical Corporation Superfund Site

Pledged Properties

1. 242 Clove Road, Montague, New Jersey (1.62 acre parcel plus residence: Block 18.42, Lot 22)
2. 256 Lake Shore North Town of Montague, New Jersey (1.77 acre parcel: Block 18.56, Lot 20)
3. 29 Deckertown Turnpike, Town of Montague, New Jersey (10 acre parcel: Block 40, Lot 3.01)
4. 128 River Road, Town of Montague, New Jersey (1.356 acre parcel: Block 1, Lot 58.01)
5. Interest in property at Off Fox Hollow Road, Town of Montague, New Jersey (22.6 acre parcel: Block 48, Lot 43)
6. Interest in property at 51 Fox Hollow Road, Town of Montague, New Jersey (3.8 acre parcel: Block 48, Lot 44)